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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9900-HII(2)-2022/14549.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 27/2020 dated 25.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

NAIB SINGH, EX-DRIVER NO.772, CHANDIGARH TRANSPORT UNDERTAKING,
CHANDIGARH, RIO SHRI GOBIND SINGH NAGAR, HOUSE NO.771, WARD NO.4, RAJPURA,
DISTRICT PATIALA, PUNJAB.. (Workman)

AND

1. SECRETARY TRANSPORT, CHANDIGARH ADMINISTRATION, U.T. CHANDIGARH.
2. DIVISIONAL MANAGER, CTU & DIRECTOR TRANSPORT, U.T. CHANDIGARH (Management)

AWARD

1. Naib Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed on the post of Bus Driver in Chandigarh Transport Undertaking (*hereinafter in short referred as 'CTU'*), Chandigarh. In pursuance of the appointment, the workman joined his service on 13.12.1990. Since then he was on the roll of CTU department. One FIR No.391 dated 06.10.2005 under Section 15 of NDPS Act, 1985, PS Sector 17, Chandigarh was registered against him. *Vide* judgment dated 02.05.2013 passed by the trial Court of Shri Rakesh Kumar Yadav, Special Judge, Chandigarh, he was convicted and sentenced to undergo rigorous imprisonment three years and to pay fine of ₹30,000/-, in default of payment of fine to undergo further imprisonment for 2 years. He was taken into custody and committed to imprisonment in jail w.e.f. 03.05.2013. He preferred a criminal appeal No. 2478 of 2013 against the judgment of conviction dated 03.05.2013, before the Hon'ble High Court of Punjab & Haryana in which he filed a criminal Misc. No.34183 of 2013, whereby *vide* order dated 27.08.2013 sentence qua imprisonment and fine was suspended during the pendency of his appeal. He was released on bail subject to satisfaction of CJM, Chandigarh. As per Rule 10(b) of Punjab Civil Services (Punishment & Appeal) Rules, 1970 he was under deemed suspension with effect from the date of his conviction i.e. 03.05.2013. Earlier he was issued charge-sheet *vide* Memo No.16988/DT/TA-II/CTU/2005 dated 21.10.2005 which was duly replied by him *vide* reply that 05.12.2005. Thereafter a regular departmental inquiry was ordered against him. The said inquiry was left half way, though the reasons were not disclosed to him. The departmental inquiry is proved to be an empty formality as such. He was

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issued show-cause notice *vide* Memo No. 3608/ECD/CTU-III/2013 dated 03.10.2013 as to why he should not be dismissed from service in view of his above said conviction by the criminal court. He filed reply to the show cause notice on 06.01.2014 explaining all his position and raising serious contentions. His services have been dismissed by the Divisional Manager, CTU and Director Transport, U.T. Chandigarh *vide* office order No.184/EAD/CTU-III/2014 dated 21.02.2014. On 06.06.2014 he preferred an appeal under Rule 17 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 impugning the order of dismissal dated 21.02.2014, before the Secretary Transport, Chandigarh Administration, U.T. Chandigarh. The Secretary Transport, Chandigarh Administration, U.T. Chandigarh *vide* its order endorsement No.15/16-CTU-(R&J)/2017/2978 dated 25.04.2017 dismissed his appeal. The impugned order dated 21.02.2014 whereby his services have been dismissed by the Divisional Manager, CTU and Director Transport, U.T. Chandigarh and the order dated 25.04.2017 whereby his appeal is dismissed by the Secretary Transport, Chandigarh Administration, U.T. Chandigarh are illegal, arbitrary, discriminatory, unreasonable, without application of mind, violative of statutory provisions, against the principle of natural justice and fair play and not in consonance with the established law. Thus, the aforesaid order are null & void, *ab-initio* on the grounds :—

- i) The impugned orders are discriminatory as almost all the convicted employees in criminal cases even on the charge of corruption, whose appeals are admitted in appellate courts have been retained in service by the CTU Department.
- ii) In other cases, the convicted employees, whose appeals are pending in their respective appellate courts are still in service and no punishment is awarded to them.
- iii) The impugned orders are not in consonance with the judgment of Hon'ble Supreme Court captioned as Life Insurance Corporation of India & Others Versus Triveni Sharan Mishra reported in 2015(12) SCC (L&S) 49.
- iv) The order dated 25.04.2017 whereby his appeal was dismissed has become infructuous because it took exactly three years for its disposal which is not in consonance with the statutory provisions, the Punjab Government instructions and the established law on the point.
- v) He has not been paid any subsistence allowance during the period of his deemed suspension under Rule 4(2)(b) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, w.e.f. 03.05.2013 to 21.02.2014 after allowing him regular annual increment during suspension period and 50% increase in his subsistence allowance after six months of his suspension along with interest @9% per annum on delayed payment of subsistence allowance. Non-payment of subsistence allowance during suspension period amounts to violation of natural justice as held by the Hon'ble Supreme Court in a case titled as Capt. M. Paul. Anthony Versus Bharat Gold Mines and another reported in AIR 1999 SCC 1416, Rattan Lal Versus State of Punjab & Others reported in 1995(4) RSJ 175, P&H (D.B.) and instructions of Legal Remembrance-cum-Director Prosecution, Chandigarh Administration bearing Memo No.5489/Asstt.-LO-96 dated 01.09.1996. He is entitled to interest @9% per annum on arrears of delayed payment of subsistence allowance.
- vi) He has not committed any misconduct under conduct rules. His alleged offence consequent upon, he has been convicted is not related with his work and employment in view of the judgment titled Krishnankutty Versus Senior Superintendent of Post Offices, 1975 All.SLJ.749, if the conduct occurs far away from the place of employment that cannot be in any way be made subject matter of disciplinary action against the Government servant. Therefore, Rule 19(i) of the Punjab Civil Services (Punishment & Appeal) Rules, does not apply.
- vii) The impugned order is discriminatory. The other employees who were convicted that too on the charges of corruption while on duty, no action has been taken against them during the pendency of their appeal in the respective courts. Some of these names are Shri Surat Singh - Mechanic, Shri Ramesh Barwal - Mechanic and Shri Aytar Singh - Clerk and so many officials of CTU i.e. Drivers and Conductors.

- viii) The impugned order is solely based upon his conviction. His circumstances and conduct, which leads to his conviction has not been considered. The judgment of Hon'ble High Court of Punjab & Haryana in case of Saudagar Singh Versus State of Punjab & Others reported in 2014(2) ILR 287 is applicable to his case.
- ix) The impugned orders are non-speaking.
- x) The conviction simplicitor has been made basis for dismissing his services which is not permissible in the eyes of the law. Proviso (a) to Article 311(2) of the Constitution of India is merely an enabling provision and does not enjoin the disciplinary authority to impose the punishment of dismissal from service in every case. Reliance is placed on Union of India Versus Tulsi Ram Patel, 1985(3) SCC 398.
- xi) Show cause notice dated 03.10.2013 issued upon his conviction dated 03.05.2013 proposing a pre-determined penalty of dismissal from services is defective and illegal and violative to the constitution. Penalty can be imposed only after considering the representation. It has caused prejudice to the applicant.
- xii) *Vide* order dated 27.08.2013 passed by the Hon'ble High Court his appeal against conviction has already been admitted and recovery of fine and sentence has been suspended. Without considering and responding to the factual state of affairs, the show-cause notice has been issued. This reveals that the disciplinary authority has not applied its mind and the show cause notice has been issued without going through the record.
- xiii) The impugned orders are not in accordance with the Punjab Government instructions dated 05.10.2016 issued on the directions of the Hon'ble Supreme Court following the decision in SLP(Civil) No.20525 of 2011 arising out in LPA No.951 of 2020 titled Avtar Singh Versus Union of India.
- xiv) FIR was registered against him on 06.10.2005. From the date of his appointment i.e. 13.12.1990 to the date of dismissal of his services i.e. 21.02.2014, there is no other case registered against him except this one. Thus, the workman deserves leniency in view the judgment of Hon'ble Supreme Court in a case titled as State of Haryana Versus Ved Kaur, Civil Appeal No.6066 of 2017 arising out of SLP (Civil) No.21622 of 2015.
- xv) Besides above all, as Holy Quran says 'mercy is better than justice'. Keeping in view the bad conditions of heavy duty Drivers, the workman deserves sympathy and leniency.
- xvi) The impugned orders are non-speaking. No cogent reply has been given to his serious contention raised against the show-cause notice in the impugned orders dated 21.02.2014 and 25.04.2017.
- xvii) His services have been dismissed during the pendency of departmental inquiry which is violative of statutory provisions and established law on the point.
- xviii) He is out of service since 21.02.2014 and has not been allowed pension, gratuity, leave encashment and GIS. He is entitled for all these benefits even though his services stand dismissed. He is facing great financial problems and finding it hard even to meet his basic needs as well as of his family.
- xix) His service record in CTU is very good and above board. Nothing adverse has been recorded in his service book.
- xx) He is unemployed since the date of his deemed suspension and dismissal from service as he is not able to locate any other job despite his best efforts.

It is further averred that a demand notice dated 19.09.2018 was sent to the management to withdraw the impugned order dated 21.02.2014 passed by the Divisional Manager, CTU and Director Transport, U.T. Chandigarh and order dated 25.04.2017 passed by Secretary Transport, Chandigarh Administration,

Chandigarh seeking to withdraw the said impugned orders within a period of 15 days from the receipt of demand notice and to grant him all the service benefits as if the said orders were never in force along with 12% interest. He also sought payment of subsistence allowance of his deemed suspension period with effect from 03.05.2013 to 21.02.2014 along with 50% increase in subsistence allowance after six months of his deemed suspension and that he may be allowed regular increment during his deemed suspension period and further he may be duly compensated for unfair labour practice and expenses and protracted litigation for getting justice. He did not receive any response to the demand notice from the management. The Assistant Labour Commissioner-cum-Conciliation Officer issued various notices to CTU management for conciliation proceedings but the management had not joined the conciliation proceedings. Finding no response, failure report in respect of conciliation proceedings was issued. The statement of claim is within time limit of three years. All the Courts all over India were closed with effect from 24.03.2020 due to lock down / curfew on account of pandemic COVID-19. The statement of claim is filed at the first instance of opening of the Hon'ble Court. Prayer is made to set aside the impugned orders dated 21.02.2014 whereby he was imposed the punishment of dismissal from service and dated 25.04.2017 whereby his appeal against the dismissal order was dismissed. He may be granted all the benefits as if the said orders were never in force along with 12% interest. He may be granted payment of subsistence allowance of his deemed suspension period with effect from 03.05.2013 to 21.02.2014 along with 50% increase in subsistence allowance after six months of his deemed suspension and that he may be allowed regular increment during his deemed suspension period and further he may be duly compensated for unfair labour practice and expenses and protracted litigation for getting justice.

2. On notice, the management contested the statement of claim by filing written statement on 11.05.2021 wherein preliminary submission is made that the workman was appointed on the post of Bus Driver in CTU and he joined on 13.12.1990. The workman was on duty with bus No.CH-01-G-5890 on 06.10.2005. FIR No.391 of 06.10.2005 under Section 15 NDPS Act was registered against the workman whereby he was found in possession of 12 Kg. poppy husk. He was taken into custody on 06.10.2005 and remained there till 05.11.2005. The trial was concluded. On conclusion of the trial the workman was convicted and sentenced to undergo RI for 3 years with fine of ₹ 30,000/- under Section 15(b) of NDPS Act and in default of payment of fine to further imprisonment for period of 2 years *vide* judgment of conviction and order of sentence dated 03.05.2013 passed by the Court of Shri Rakesh Kumar Yadav, Judge, Special Court, Chandigarh. In pursuance of the judgment the workman was taken into custody on 03.05.2013. The workman filed a criminal appeal No.2478-SB of 2013 against the judgment of conviction dated 03.05.2013 before the Hon'ble High Court of Punjab & Haryana wherein he filed a criminal Misc. No. 34183 of 2013 whereby sentence qua imprisonment of the workman was suspended and he was released on bail on 03.09.2013 subject to the satisfaction of CJM, Chandigarh *vide* order dated 27.08.2013 passed by the Hon'ble High Court. The workman remained in jail for about 4 months and 25 days out of actual sentence, as on 26.08.2013. The workman was placed under suspension *vide* order No.DT/CTU/2005/407 dated 07.10.2005. The workman was charge-sheeted *vide* Memo No. 16988/DT/TA-I/CTU/2005 dated 21.01.2005 to which the workman submitted reply dated 05.12.2005 wherein he admitted the factum of criminal case against him. His reply to the charge sheet was considered by the competent authority and the same was not found satisfactory and explanatory in itself. The competent authority ordered to hold departmental inquiry by appointing Shri Surinder Kumar General Manager as Inquiry Officer *vide* order dated 09.12.2005 endorsement No. 19873/DT/TA-II/CTU/05. The workman was under trial in the court of Shri Rakesh Kumar Yadav, Judge, Special Court, Chandigarh. The said Hon'ble Court on 03.05.2013 convicted the workman and sentenced him. A show-cause notice dated 03.10.2014 was served upon the workman to explain his position as to why he should not be dismissed from service in view of the conviction awarded by the Judge, Special Court, Chandigarh *vide* judgment dated 03.05.2013. The workman submitted reply dated 17.10.2013 to the show-cause notice wherein he admitted that FIR No.391 dated 06.10.2005 was registered against him and he was granted bail on 27.08.2013 and released from judicial custody on 03.09.2013. The workman further submitted that he assailed the judgment of conviction by filing the Criminal Appeal No. 2478-SB of 2013 in the Hon'ble High Court of Punjab & Haryana. The appeal stands admitted and recovery of fine and order of sentence has been suspended *vide* order dated 27.08.2013 passed by the Hon'ble

High Court. The conviction order is not set aside. The workman also admitted that he remained absent from duty and in this connection he was charge sheeted.

3. Further on merits, the facts relating to appointment of the workman as Bus Driver, registration of FIR No.391 dated 06.10.2005 under Section 15 NDPS Act, PS Sector 17, Chandigarh against the workman, the judgment of conviction dated 02.05.2013 passed by the learned Judge, Special Court, Chandigarh, the filing of criminal Appeal No.2478 of 2013 by the workman against the judgment of his conviction, in the Hon'ble High Court, the passing of order dated 27.08.2013 by the Hon'ble High Court regarding suspension of sentence and stay of recovery of fine are replied being matter of record. Naib Singh - Driver No.722 was placed under suspension *vide* order No.DT/CTU/2005/407 dated 07.10.2005 and reinstated *vide* DT order No.8600 dated 21.06.2006. The issue of charge-sheet *vide* Memo No.19668/DT/TA-II/CTU/2005 dated 21.10.2005 and filing of its reply dated 05.12.2005 by the workman is not disputed and admitted being matter of record. The fact that the regular departmental inquiry was ordered against the workman is not disputed and admitted being matter of record. The fact that the said regular departmental inquiry was left half way is not disputed and admitted being matter of record. However, it is submitted that the workman was quite aware of his departmental proceedings and he used to appear in the departmental inquiry to defend his case. The evidence of the prosecution was recorded in his presence and he was also given an opportunity to cross-examine the prosecution witnesses but the workman *vide* his letter dated 22.08.2008 requested to stop the inquiry proceedings due to pendency of the case in the Court of law. The fact that the workman was issued show cause notice *vide* Memo No. 3608/ECD/CTU-III/2013 dated 03.10.2013, to which he filed reply on 06.01.2014 and further the fact that the workman was dismissed from service *vide* order dated 21.02.2014 passed by the Divisional Manager, CTU and Director Transport, U.T. Chandigarh, the fact that the workman preferred appeal on 06.06.2014 passed the dismissal order dated 21.02.2014 and the fact that the appeal was dismissed by the appellate authority i.e. Secretary Transport, Chandigarh Administration, U.T. Chandigarh *vide* its order dated 25.04.2017 are admitted being matter of record. It is submitted that in compliance of order dated 29.03.2017 passed by the learned Appellate Authority, the workman was called for personal hearing wherein he pleaded that some employees are convicted and their sentence has been suspended by the appellate court are working in the CTU. The contention of the workman was duly considered by the punishing authority and all the records was checked whereby it was found that in some cases the employees have been acquitted and therefore their cases have been filed and they were taken back in service on the ground of their acquittal. In rest of the cases, show-cause notice have been issued for taking appropriate action against the person / officials who are convicted and still working in the department. But in this case the case of the workman is an independent case and he cannot take the shelter of other cases because admittedly he has been sentenced and convicted *vide* judgment of conviction and order of sentence dated 03.05.2013 by the Learned Judge, Special Court, Chandigarh for the commission of offence under Section 15(b) NDPS Act which is not only a heinous crime against the society but comes under ambit of moral turpitude. Hence, the act and conduct of the workman is not desirable to retain into service and that is why his services were dismissed *vide* order dated 21.02.2014 and appeal against the dismissal order was dismissed *vide* order dated 25.04.2017. Under Article 311(2) of the Constitution of India, the said orders dated 21.02.2014 and 25.04.2017 are well reasoned and speaking orders. The same are liable to be upheld in the eyes of law because the same have been passed after adopting due procedure of law and under the canons of natural justice. The workman is not entitled to get any relief of his reinstatement from this Hon'ble Court because it is settled law that if any employee is convicted then he is not liable to be retained in the Government service on the conduct, which has led to his conviction on a criminal charge. The conviction is much sufficient to remove the services of an employee. Even if the appeal is pending before the appellate Court against the judgment of conviction then also the services of the Government employee are liable to be removed on the basis of conviction passed by the trial Court. Reliance is placed upon the judgment dated 24.02.1995 of the Hon'ble Supreme Court in Civil Appeal No.2992/1955 in a case titled as Deputy Director of Collegiate Education Versus S. Nagoor Meera reported in 1995 SCC(3) 377 and another judgement dated 02.08.2001 of Hon'ble Supreme Court of India titled K. C. Sareen Versus CBI, Chandigarh in Appeal (Crl.) 770 of 2001. Rest of contents of the statement of claim are denied being wrong except sub-para

(xx) of para 16 and para 17 which are replied being matter of record. Prayer is made that the statement of claim may be dismissed.

4. The workman filed rejoinder to the written statement wherein the preliminary submissions are admitted being matter of record and the reply on merits is denied as wrong except admitted facts and averments of statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 20.07.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Relief.

6. In evidence, the workman Naib Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto. AW1 has supported his oral version with documents i.e.

Exhibit 'AW-A1'—copy of report dated 24.06.2009 of LO-II and LO(H) relating to Avtar Singh Clerk, CTU, wherein the reporting authority has opined that in case of Avtar Singh Clerk, his sentence has been stayed by the Hon'ble High Court of Punjab & Haryana in appeal and trial court's verdict has not attained finality, thus his case is squarely covered under the judgement of Hon'ble Apex Court (Smt. Akhtari Bi Versus State of M.P. (JT 2001(4)SC, 40). It is further opined that it is therefore considerable not to conclude the disciplinary proceedings during the pendency of appeal, pending before the Hon'ble High Court and to wait for the final verdict in appeal. Furthermore, the departmental proceedings against Avtar Singh, Clerk are also pending based on the same set of facts on which the criminal action has already been initiated; the same is in the process of findings, which is likely to be concluded shortly.

Exhibit 'AW-A2'—Copy of departmental action against Shri Surat Singh, an employee of CTU, Chandigarh. As per contents of Exhibit 'A2' FIR No.39 dated 03.10.2001 under Section 7 and 13(1)(d) r/w Section 13(2) PC Act, 1968 was registered against Shri Surat Singh. IN the said case, CBI, Chandigarh *vide* letter dated 30.12.2002 has recommended minor penalty.

Exhibit 'AW-A3'—Copy of punishment order dated 16.10.2009 passed by Shri M. L. Sharma, PCS, Director Transport, U.T. Chandigarh relating to Shri Ramesh Chand Barwal, Mechanic CTU, who was charged that by not charging the full amount of challan dated 10.07.2001 in respect of vehicle No.DL-IP-A-5979 has acted in a manner unbecoming of a Government servant. The said official was imposed penalty of stoppage of one increment without cumulative effect.

Exhibit 'AW-A4' —Copy of order No.519/ECD/CTU/HOD/2003 dated 21.10.2003 whereby Shri Sukhwinder Singh - Driver No.681 was reinstated with immediate effect without prejudice to the final outcome of criminal revision No.1246 of 2002 pending in the Hon'ble High Court of Punjab & Haryana and Shri Sukhwinder Singh was posted in Depot - I from Depot - II.

Exhibit 'AW-A5'—Copy of order dated 13.03.2009 passed by Capt. P. S. Shergill, PCS, Divisional Manager and Director Transport, U.T. Chandigarh relating to Shri Mohan Singh, Junior Assistant, who was placed under suspension w.e.f. 07.06.1988 i.e. the date of detention in FIR No.257 dated 27.12.1985 under Sections 307, 323, 324, 325, 149 IPC, PS Manimajra. *Vide* said order dated 13.03.2009 it was ordered to regularise the suspension period from 07.06.1988 to 10.06.1988 as leave of the kind due.

Exhibit 'AW-A6' —Copy of judgment tilted Management of Chandigarh Transport Undertaking, Chandigarh Versus Kuldip Singh reported in 1993(3) SCT 331 P&H.

Exhibit 'AW-A7'—Copy of gazette notification dated 17.01.1994 (published on 18.01.1994) of Government of India, Chandigarh Administration Gazette, wherein award dated 19.11.1993 delivered by the Labour Court / Industrial Tribunal, U.T. Chandigarh in industrial dispute between Vice President,

Chandigarh Govt. Transport Workers' Union Chandigarh and General Manager, Chandigarh Transport Undertaking referred by the Chandigarh Administration *vide* endorsement NO.13/1/2158/HII(4)-88/2013 was published.

Exhibit 'AW-A8'—Copy of order dated Nil passed by Dr. Ajay K. Singla, IAS, Secretary Transport, Chandigarh Administration in appeal No.17 of 2018-CTU relating to Shri Harinder Singh - Driver No.614. As per the contents of said order FIR NO.49 dated 21.07.1998 under Section 279, 304-A, 427 IPC, PS Anandpur Sahib was registered against Shri Harinder Singh - Driver No.614. He was dismissed one and a half years prior to his retirement. His appeal was allowed and the punishment order dated 18.05.2017 passed by the Divisional Manager, CTU-cum-Director Transport, U.T. Chandigarh was set aside being devoid of any merits.

Exhibit 'AW-A9'—Copy of order dated 27.03.2019 passed by Dr. Ajay K. Singla, IAS, Secretary Transport, Chandigarh Administration relating to Shri Avtar Singh - Driver No.551, CTU Chandigarh who was convicted and sentenced under Section 304 IPC *vide* judgment dated 28.02.1989 passed by learned Additional Sessions Judge, Patiala. Shri Avtar Singh was dismissed from service mere few weeks before retirement. His appeal against the punishment order of dismissal was allowed and the punishment order dated 18.05.2017 passed by the Divisional Manager, CTU-cum-Director Transport, U.T. Chandigarh was set aside being devoid of any merit.

Exhibit 'AW-A10'—Copy of newspaper publication item (English Edition), December 2019, (name of newspaper not mentioned) wherein news is published with the head line 103 cops convicted in criminal cases still in service, Pb. tells HC.

Exhibit 'AW-A11'—Copy of order No.184/EAD/CTU-III/2014 dated 21.02.2014 passed by Divisional Manager, CTU and Director Transport, U.T. Chandigarh relating to Shri Naib Singh - Driver No.722 of CTU whereby he was dismissed from service with immediate effect.

Exhibit 'AW-A12'—Copy of order dated 29.03.2017 passed by Shri K. K. Jindal, IAS, Secretary Transport, Chandigarh Administration, whereby the punishing order dated 21.02.2014 passed by the Director Transport, U.T. Chandigarh was affirmed and appeal was dismissed.

Exhibit 'AW-A13'—Copy of Punjab Civil Services (Punishment & Appeal) Rules, 1970

Exhibit 'AW-A14'—Copy of order No.321/ECD/HOD/CTU/2003 dated 26.06.2003 passed by Divisional Manager, CTU and Director Transport, U.T. Chandigarh relating to Shri Sukhwinder Singh - Driver No.681, whereby it is ordered that Shri Sukhwinder Singh - Driver No.681 was deemed to have been suspended w.e.f. the date of detention i.e. 21.05.2002 to 28.10.2002 in terms of sub-rule (2) of Rule 4 of Punjab Civil Services (Punishment & Appeal) Rules, 1970 and shall remain under suspension until further order.

Exhibit 'AW-A15'—Copy of order No.321/EAD/CTU/HO/2016 dated 27.10.2016 passed by Divisional Manager, CTU and Director Transport, U.T. Chandigarh relating to Shri Inderjit Singh - Driver No.07, CTU, whereby it was ordered that Shri Inderjit Singh - Driver No.07/CTU/Depot No.III is deemed to have been placed under suspension from the date of his detention in the jail, to serve / undergo the above sentence i.e. 15.07.2015 in terms of Rule 4(2)(b) of Punjab Civil Services (Punishment & Appeal) Rules, 1970 and shall remain under suspension till further order.

On 12.11.2021 learned representative for the workman closed the evidence.

7. On the other hand, learned Law Officer for the management examined MW1 Ms. Sumitra Rawat - Senior Assistant, CTU, Office of Director Transport and Divisional Manager, U.T. Chandigarh, who tendered her affidavit Exhibit 'MW1/A' along with document i.e. Copy of order No.1619/ECM/G-9/CTU/2019 dated 19.02.2019 passed by Divisional Manager, CTU and Director Transport, U.T. Chandigarh relating to Shri Avtar Singh - Clerk, CTU, whereby Shri Avtar Singh was ordered to be dismissed from service with immediate effect on the ground of his conduct leading to his conviction on a criminal charge *vide* Exhibit 'MW1/1'. On 16.08.2022 learned Law Officer closed evidence of the management.

8. I have heard the arguments of learned representative for the workman and learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

9. Onus to prove this issue is on the workman.

10. Under this issue, the workman Naib Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto. AW1 supported his oral version with document Exhibit 'AW-A1' to 'AW-A15'. On the other hand, learned Law Officer for the management referred the testimony of MW1 Ms. Sumitra Rawat - Senior Assistant, CTU, Office of Director Transport and Divisional Manager, U.T. Chandigarh, who *vide* her affidavit Exhibit 'MW1/A' deposed all the material contents of the written reply.

11. From the oral as well as documentary evidence led by the parties, it come out that there is no dispute with regard to the facts that Naib Singh, workman Driver No.772 was appointed on the post of Bus Driver in CTU, who joined duty on 13.12.1990 with CTU, Chandigarh. The workman was on duty with bus bearing registration No.CH-01-G-5890. On 06.10.2005 checking was conducted at Bus Stand, Sector 17, Chandigarh. During checking from the possession of the workman Naib Singh 12 Kg. Poppy husk was recovered. Consequently FIR No.391 dated 06.10.2015 under Section 15 NDPS Act, PS Sector 17, Chandigarh was registered against workman Naib Singh. The workman was taken into custody on 06.10.2005 and remained in custody till 05.11.2005. Trial into the aforesaid FIR was conducted and concluded *vide* judgment dated 03.05.2013 passed by the Court of Shri Rakesh Kumar Yadav, Judge, Special Court, Chandigarh in NDPS case No.110 of 2006 / 2011, date of institution 24.03.2006 / 18.08.2011 computer ID No.36014R0048962006 titled State Versus Naib Singh. *Vide* aforesaid judgment dated 03.05.2013, Naib Singh was convicted and sentenced under Section 15(b) of NDPS Act to under RI for 3 years and to pay fine of 30,000/- in default thereof to further undergo RI for 2 years. The workman Naib Singh filed criminal appeal No.2478-SB of 2013 in the Hon'ble High Court against the judgement of conviction dated 03.05.2013 of trial court. The Hon'ble High Court suspended the sentence and stayed the recovery of fine during the pendency of the appeal and ordered to release the appellant Naib Singh on bail to the satisfaction of the CJM, Chandigarh. On 07.10.2005 *vide* order No. DT/CTU/2005/407 dated 07.10.2005 the workman was placed under suspension. He was charge-sheeted *vide* Memo dated 21.10.2005 to which the workman replied on 05.12.2005. Regular departmental inquiry was initiated against the workman. The workman failed to controvert the fact that he wrote letter dated 28.08.2008 and requested to the Inquiry Officer to stop the inquiry proceedings due to pendency of case in the court of law. Further there is no dispute with regard to the fact that after the judgment of conviction dated 03.05.2013 the workman was served with show cause notice No. 3608/ECD/CTU-III/2013 dated 03.10.2013 calling his explanation as to why he should not be dismissed from service in view of his above said conviction by the criminal court. The workman filed reply to the show cause notice on 06.01.2014. After considering the reply to the show cause notice the workman was dismissed from service *vide* order of dismissal dated 21.02.2014 / Exhibit 'AW-A11'. The workman preferred appeal the dismissal order against the dismissal order Exhibit 'AW-A11'. Admittedly, the workman was provided with the opportunity of personal hearing and the workman availed the same. Thereafter the appellate authority dismissed the appeal *vide* order dated 24.05.2017 / Exhibit 'AW-A12'.

12. The workman has taken the plea that the dismissal order dated 21.02.2014 / Exhibit 'AW-A11' and the order of dismissal of appeal dated 24.05.2017 / Exhibit 'AW-A12' are arbitrary, discriminatory, violative to the statutory provisions of the Constitution and also amounts to harsh punishment in comparison to the other employees of CTU against whom lenient view were taken *vide* orders Exhibit 'AW-A1' relating to Shri Avtar Singh - Clerk, CTU; 'AW-A2' relating to Shri Surat Singh, an employee of CTU; 'AW-A3' relating to Shri Ramesh Chand Barwal - Mechanic, CTU; 'AW-A4' relating to Shri Sukhwinder Singh - Driver No.681, CTU; 'AW-A5' relating to Shri Mohan Singh - Junior Assistant, CTU; 'AW-A8' relating to Shri Harinder Singh - Driver No.614, CTU; 'AW-A9' relating to Shri Avtar Singh - Driver No.551, CTU, 'AW-A14'

relating to Shri Sukhwinder Singh - Driver No.681, CTU; 'AW-A15' relating to Shri Inderjit Singh - Driver No. 07, CTU. By making reference to the aforesaid documents learned representative for the workers' union laid much stress on the fact that the case of the workman is similar to the above mentioned employees of CTU. The punishing authority must have taken the lenient view for awarding punishment in the case of the workman Naib Singh as taken in the departmental proceedings against the above mentioned employees. To my opinion, each case has its own facts and circumstances. As per copy of order Exhibit 'MW1/1' employee of CTU Avtar Singh - Clerk was ordered to be dismissed from service with immediate effect on the ground of his conduct leading to conviction on a criminal charge. In view of the aforesaid order Exhibit 'MW1/1', the plea taken by the workman that he has been discriminated finds no merits. In the present case the workman has not challenged the procedure adopted by the Inquiry Officer to hold the departmental inquiry. Admittedly, the workman was issued show cause notice to which he filed reply. After considering the reply the punishment order of dismissal dated 21.02.2014 / Exhibit 'AW-A11' was passed. Then, in compliance of order dated 29.03.2017 the workman was called for personal hearing and the pleas raised by him were considered and declined, consequently the punishment order dated 21.02.2014 / Exhibit 'AW-A11' was upheld and the appeal was dismissed *vide* order dated 25.04.2017 / Exhibit 'AW-A12'. There is nothing on record to deny the fact that the orders Exhibits 'AW-A11' and 'AW-A12' are speaking orders. When the due procedure adopted by the Inquiry Officer is proved, then quantum of punishment cannot be look into by this Court. The law laid down in the judgment passed by Hon'ble High Court of Punjab & Haryana on 19.11.2018 in CWP No. 27383 of 2013 (O&M) titled as *Dhir Chand Versus State of Haryana & Others, Sudagar Singh Versus State of Punjab & Others, 2014(2) I.L.R. (Pb. & Hry.); Management of Chandigarh Transport Undertaking, Chandigarh Versus Kuldeep Singh, 1993(3) SCT 331 (P&H) and judgment passed by Hon'ble Supreme Court of India in Civil Appeal No.6866 of 2017 decided on 03.05.2017 titled State of Haryana & Another Versus Ved Kaur* referred by learned representative for the workman is well recognised by this Court but the ratio of rulings is not applicable to the facts of the present case. On the other hand, the case law referred by learned Law Officer reported in *1995 SCC(3) 377 SC titled as The Deputy Director of Collegiate Versus Nagoor Meera and Judgment dated 02.08.2001 passed by the Hon'ble Supreme Court of India in case titled as K. C. Sareen Versus C.B.I., Chandigarh* is applicable to the facts of the present case to an extent. Since the punishment order Exhibit 'AW-A11' and order of appeal Exhibit 'AW-A12' are legal and valid, thus, in view of Rule 4(b) Punjab Civil Services (Punishment & Appeal) Rules, 1970 the workman is neither entitled to the benefits of subsistence allowance for the period w.e.f. 03.05.2013 to 21.02.2014 nor entitled to get any regular annual increment during suspension period, nor entitled to 50% increase in the subsistence allowance after six months of his suspension period, nor entitled to any interest as claimed. As such the workman has failed to prove on record that his services were terminated illegally by the management.

13. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

14. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated 25.08.2022

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd October, 2022

No. 13/1/9899-HII(2)-2022/14561.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 88/2017 dated 29.08.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JYOTI PARKASH S/O SHRI HARBHAJAN SINGH, R/O HOUSE NO. 414, NEAR SAI BABA MANDIR RAVINDRA ENCLAVE, PHASE - I, BALTANA, TEHSIL DERA BASSI, DISTRICT SAS NAGAR, MOHALI. (Workman)

AND

GROZ BECKERT ASIA PRIVATE LIMITED, PLOT NO. 133-135, INDUSTRIAL AREA, PHASE - I, CHANDIGARH THROUGH ITS MANAGING DIRECTOR AND MANAGER (Management)

AWARD

1. Jyoti Parkash, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman Jyoti Parkash joined the services of the management on 01.04.2002 as a trainee. The workman successfully completed two years training period. On the basis of successful completion of training he was kept in service as a probationer. After successful completion of one year probation period the management issued appointment letter on 07.05.2015 as the worker-cum-Helper category - II on permanent / regular base and fixed wages ₹1,580/- plus allowances and incentive per month. The workman successfully performed his duties. The workman was punctual and honest for his duties. The workman worked with full dedication. The management was entire satisfied with his work and conduct and thus the management gave two annual increments and two promotions to the workman during his service. Now the workman was drawing wages of ₹47,382/- per month. On 17.12.2016 the Managing Director of company gave a speech in meeting of all employees. In his speech the Managing Director said that "we have no work for some employees, willing person may submit resignation otherwise the company will take action at own level". The management did not get number of resignations of workers up to wish, then the management started unfair labour practices to obtain the resignation of the workers including the workman. In fact the management was taking benefit of prevailing unemployment. Under this illegal policy some workers were targeted with aim to achieve the goal of resignations so that at their place new worker / workers can be appointed with a low wages or to impose the additional workload on the existing workers, to reduce the labour charges on the production. The workman is a hunt of this policy adopted by the management. Shri Sukhwinder Singh - Production Manager and Shri Vikram - HRA Manager started torturing the workman from the last 2-3 months repeatedly with consent and connivance of the Managing Director of the company to achieve the goal of workman's resignation, against the will of the workman. The officers several time called the workman in their cabin during the duty hours. Instead of giving work the workman was directed to stand idle with the wall. Due to the bad behaviour of the officers named above, the workman was under depression. Shri Sukhwinder Singh - Production Manager and Shri Vikram - HR Manager time and again called the workman in their cabin and compelled him to give resignation from the service during the duty hours. The Managing Director is personally responsible for all illegal acts and conduct of Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager. The said Shri Sukhwinder Singh and Shri Vikram Singh were mentally and physically torturing, harassing and used abusive language against the workman due to which the workman was facing torture and harassment from the hands of above named officers from the last 2-3 months regularly. Not only this, during duty hours the workman was stopped not to go to toilet up to 4-5 hours. Due to this reason the workman is under depression. On 17.03.2017 during the duty hours around 3:00 P.M. Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager called workman in his cabin and started abusing him. Shri Sukhwinder Singh - Production Manager forcibly gave him a paper

and pen compelling to tender his resignation. In turn the workman requested them to tell him his fault. Without listening the workman above named Shri Sukhwinder Singh and Shri Vikram Singh caught hold the workman from his collar and slapped on his mouth without any rhyme. During the manhandling Shri Vikram Singh - HR Manager abused haram ki audald if you fail to give your resignation today, then we have good understanding with police officers, we will get registered any theft case which is non-bailable offence. In these bad circumstances at 3:00 P.M. the workman was pushed in deep depression. Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager compelled the workman to consume some poisonous substance, due to which the workman became semi-unconscious. In compliance with the orders of above mentioned both the officers, one Security Guard pushed the workman outside to the main gate of the factory instead of help and treatment. The workman re-entered the main gate of the factory and become unconscious. Then some employee carried and admitted the workman in the EDEN Hospital, Phase - I, Chandigarh. The police officers came in the hospital to record statement of the workman. The officers asked the mobile number of the company's officers. After getting mobile number they talk with them on mobile phone. They changed tone, instead to lodge the FIR against the guilty person, they started to pressurise the workman to make statement as they are saying otherwise they will register a case against him. After that they recorded the statement according to their own will under the name and signature of the workman. The workman remained admitted in the EDEN Hospital, Phase - I, Chandigarh in ICU from 17.03.2017 to 01.04.2017. Thereafter the workman was advised rest and he again taken treatment from GMCH, Sector 32, Chandigarh. The Doctor of GMCH, Sector 32, Chandigarh also advised rest to the workman. The workman send the medical certificate with application through registered cover. The workman is only bread earner of his family. He has one small baby aged 1 year. The family of workman has no source of income except the wages received by the workman from the company in lieu of his services. The factory of the management is a private company. It is legal duty of the management to protect the person from unlawful torture during duty hours but the workman faced highly physically and mental torture due to illegal act and conduct of Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager, who are doing the same with the consent and connivance of higher management. The workman reported for duty with written joining and original fitness certificate on 20.04.2017 but the management refused to allow duty to the workman. Thereafter the workman several times visited in office and requested verbally or in writing to the officer to take him back in service but the management did not hear his genuine request. The refusal to work is illegal by all means. The management refused to receive the written joining and original fitness certificate, thereafter the workman send the same to the management through registered cover. The management wants to achieve pre-determinational goal i.e. to end the services of the workman from the factory management by this way or that way. According to the pre-condition of Section 25-F of the ID Act and other provisions of labour law, the refusal to allow work is illegal by all means. The management has adopted wrong practice to remove the old workman and to keep junior workman in service and his place. It is against the principle of 'last come first go'. The workman is poor and fully dependent upon the wages the termination order badly disturbed the workman's family. After termination he is totally unemployed till date. The workman is facing all difficulties of unemployed persons including starvation. There is no other remedy available to the workman except to submit demand notice. The management has not issued any memo, charge sheet nor conducted any inquiry before termination till date. The workman was not at fault. The workman number of times requested the concerned officer to take him back on duty verbally or in writing but the management did not hear his requests. This is a gross violations of principles of natural justice. The management has not paid or offered notice pay in lieu of notice nor paid any compensation. The job of the workman exists as it is till date. The junior workmen to the workman are still retained in service by the management. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act. The management adopted unfair legal practices and illegal termination is the part of the same. The management verbally terminated the services of the workman without offering and paying any type of financial benefits and did not assure reemployment to the workman. Thus, the termination order is in violation to all the mandatory provisions of the ID Act. The verbal termination order is illegal, *mala fide* and violative to all the provisions of the ID Act. Even before termination of the workman no charge sheet was issued hence no inquiry was held. The termination order passed by the management on 21.04.2017 is totally illegal, unjustified, against all the provisions of principles of natural justice, equity and fair play. Prayer is made that the workman be reinstated into service with full back wages and continuity of service with effect from 21.04.2017.

2. On notice, the management appeared through Shri D. P. Sharma, authorised representative and contested the statement of claim by filing written statement on 21.02.2018 wherein preliminary objections are raised on the ground that Jyoti Parkash was holding a supervisory position while working as a Chargeman. He was responsible for supervision, control and imparting training to the personnel in the profiling department. The workman was also responsible for proper maintenance, discipline and decorum in the department. The workman was promoted to the post of Chargeman with effect from 01.04.2013 vide letter dated 30.04.2013. Admittedly, the workman was drawing salary of ₹47,382/- per month. In this view of the matter, Jyoti Parkash had been employed in a supervisory capacity and as such by no stretch of imagination he can be treated to be a 'workman' as defined under Section 2(s) of the ID Act. Therefore, the statement of claim filed by Jyoti Parkash under Section 2-A of the ID Act is illegal and deserves to be rejected in limine. There has been no verbal order of termination of the services of Jyoti Parkash as alleged. Consequently the statement of claim in pursuant to the alleged verbal order is non-existent and void *ab initio*. In fact the services of Jyoti Parkash were dispense with vide written order dated 21.04.2017 as the management had lost complete confidence in him as an employee of the company owing to the occurrence dated 17.03.2017 for which Jyoti Parkash was solely responsible. Therefore, the statement of claim seeking relief of reinstatement is illegal and needs to be rejected.

3. Further on merits, it is admitted as correct that the workman Jyoti Parkash joined the services of the management on 01.04.2002 as a trainee. The workman successfully completed two years training period. On the basis of successful completion of training he was kept in service as a probationer. After successful completion of one year probation period the management issued appointment letter on 07.05.2015 as the worker-cum-Helper category - II on permanent / regular base and fixed wages ₹1,580/-plus allowances and incentive per month. The workman successfully performed his duties. The workman was punctual and honest for his duties. The workman worked with full dedication. The management was entire satisfied with his work and conduct and thus the management gave two annual increments and two promotions to the workman during his service. Now the workman was drawing wages of ₹47,382/- per month. It is further stated that on 07.12.2016 the Managing Director of the company delivered a speech to all the workers / employees / staff of the company, who shared with them the past, present and future business challenges. The good work done by some of the departments was also appreciated. Therefore, the various allegations as alleged by Jyoti Parkash are misconceived, misread and misinterpreted. It is strongly denied that the Managing Director has said that "we have no work for some employees; willing person may submit resignation, otherwise the company will take action at own level." It is specifically denied that Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager, since last 2-3 months repeatedly with consent and connivance of the Managing Director of the company, to achieve the goal of Jyoti Parkash's resignation against his will as alleged. It is denied as wrong that the officers several times called Jyoti Parkash in their cabin during his duty hours and he was told that instead of giving him work, he had been directed to stand idle with wall. It is denied as wrong that due to that behaviour of the officers, Jyoti Parkash was under depression. It is denied that Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager called Jyoti Parakash in their cabin time and again and compelled him to give resignation from service during duty hours. It is denied that the above said officers mentally and physically tortured, harassed and used abusive language against Jyoti Parkash or that the said officers for the last two three months stopped Jyoti Parkash from going to toilet up to 4-5 hours and for this reason Jyoti Parkash was under depression. The alleged incident dated 17.03.2017 at 3:00 P.M. is denied as wrong. In fact, on 17.03.2017 Jyoti Parkash reported for duty at 2:00 P.M. in his scheduled shift in Auto Profiling Department. At around 2:55 P.M. Jyoti Parkash rushed towards the main gate of the factory told the Security Supervisor Mohinder Singh on duty, that he is in 'B' Shift and was going back home. When the Jyoti Parkash was asked about his leave card, he replied to the Security Supervisor that "main waise hi ja raha hun" and thrown away his engineering coat and he ran towards the exist gate of the factory. The Security Supervisor tried to stop Jyoti Parkash but Jyoti Parkash pushed him away and uttered that if he wanted to tell somebody then tell him. The Security Supervisor caught holds Jyoti Parkash but Jyoti Parkash threatened him to break his teeth with brick. Thereafter, Jyoti Parkash went out of the main gate of the factory. This incident was brought to the notice of Shri Bhupinder Singh - Shift Incharge, Shri Sukhwinder Singh - AGM Production and Shri Ajay Patial - Executive HR and also to DGM - HR. At about 3:30 P.M. Jyoti Parkash forcibly pushed the picket gate of the factory and entered the factory premises. Immediately thereafter, Jyoti Parkash fell down on

the floor of the main gate and told Mohinder Singh - Security Supervisor that he had consumed some substance. The Security Supervisor reported the matter to DGM-HR immediately and Jyoti Parkash was taken to EDEN Hospital, Industrial Area, Phase - I, Chandigarh. As reported by Jyoti Parkash to the Doctors on duty, Jyoti Parkash had consumed 'All-out' poisonous substance on 17.03.2017 for which he was treated in the hospital from 17.03.2017 to 01.04.2017 and discharged from hospital on 01.04.2017. It is denied as wrong that Jyoti Parkash has taken treatment from GMCH, Chandigarh and he was advised rest. It is further denied as wrong that Jyoti Parkash reported for duty with written joining and original fitness certificate on 20.04.2017 and the management refused to allow duty to Jyoti Parkash. It is denied as wrong that Jyoti Parkash visited the office and requested verbally or in writing to the officers of the management to take him back in service but the management did not hear his genuine request. It is denied as wrong that when the management refused to receive the written joining and original fitness certificate then the Jyoti Parkash sent the same to the management through registered cover. In fact Jyoti Parkash did not report for duty on 20.04.2017, however, a letter dated 20.04.2017 sent by Jyoti Parkash was received on 23.04.2017. Keeping in view the magnitude of the incident which took place on 17.03.2017 and in order to avoid repetition of similar incident in future, the services of Jyoti Parkash were dismissed w.e.f. 21.04.2017. Jyoti Parkash was working in a supervisory capacity as such none of the provisions of the ID Act including Section 25-F are applicable to him as such he cannot seek any relief under the ID Act. In view of the incident dated 17.03.2017 the management was constrained to dismiss Jyoti Parkash without issuing any memo, charge sheet or holding any inquiry because would not serve any purpose in the given circumstances. Rest of the averments of claim are denied as wrong and prayer is made that statement of claim of the workman may be dismissed with exemplary cost.

4. The workman filed replication to the written statement wherein the contents of the written statement for denied as wrong except admitted facts and averments of statement of claim are reiterated.

5. From the pleadings of the parties, following issues were framed *vide* order dated 23.03.2018:—

1. Whether Shri Jyoti Parkash is not a 'workman' under the ID Act ? OPM
2. Whether the services of Shri Jyoti Parkash were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

6. In evidence, the workman Jyoti Parkash examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents i.e. attested copy of letter dated 27.06.2016 incorporating the details of revised compensation with effect from 01st July 2016 relating to Jyoti Parkash, Employee ID No. 430704, designation Chageman *vide* Exhibit 'W1'; attested copy of identity card of Jyoti Parkash issued by Groz-Beckert incorporating date of issue 01.04.2002, Department trainees (Trg. Center) *vide* Exhibit 'W2'; attested copy of appointment letter dated 07.04.2004 issued by Manager, Groz-Beckert Asia Private Limited to Jyoti Parkash appointing him as worker-cum-helper w.e.f. 07.04.2004 *vide* Exhibit 'W3'; attested copy of letter dated 07.04.2005 issued by Manager, Groz-Beckert Asia Private Limited whereby on completion of probationary period the management confirmed the services of Jyoti Parkash as worker-cum-helper in Cat.-II with effect from 07.04.2005 with the note that his services will continue to be governed by the provisions of company's Certified Standing Orders and other conditions as given in the letter of appointment *vide* Exhibit 'W4'; attested copy of office order dated 30.04.2016 whereby the management i.e. G.M. (HR & Admin) and Vice President (Tech) promoted Jyoti Parkash, E Code 730704 as Chageman in Profiling Department with effect from 01.04.2013 *vide* Exhibit 'W5'; attested copy of application dated 12.05.2017 addressed from Jyoti Parkash to Managing Director, Groz-Beckert Asia Private Limited, Chandigarh *vide* Exhibit 'W6'; copy of application dated 20.04.2017 from Jyoti Parkash to the Managing Director on the subject of joining report with the fitness with his handwritten endorsement *vide* Exhibit 'W7'. On 08.05.2019 learned representative for the workman closed evidence on behalf of the workman.

7. On the other hand, the management examined MW1 Mohinder Singh, Security Supervisor by M/s Hawks Eye Security Services Private Limited (Contractor) in the establishment of Groz-Beckert Asia Private Limited, who tendered his affidavit Exhibit 'MW1/A'; MW2 Sukhwinder Singh - Assistant General Manager - Production, M/s Groz-Beckert Asia Private Limited, who tendered his affidavit Exhibit 'MW2/A'.

In cross-examination of MW2 affidavit Exhibit 'MW2/A' is put to the witness by the representative for the workman. On 23.09.2021 learned representative for the management tendered into evidence certified copy of the evidence led by Jyoti Parkash as CW1 and Jasvir Singh S/o Gurdeep Singh as CW4 in criminal complaint No.2273 of 2017 filed against the Managing Director, Production Manager, HR Manager of M/s Groz Beckert Asia Private Limited along with copy of police inquiry report dated 23.03.2017 *vide* Exhibit 'M1' (consisting of page 1 to 11); copy of order dated 07.05.2019 passed by the Court of Shri Kushal Singla, PCS, JMIC, Chandigarh in complaint No.2273 of 2017, date of institution 07.04.2017, CNR No.CHCH03-003672-2017 tiled as Jyoti Parkash Versus Anton Reinfelder, Managing Director, Groz Beckert Asia Private Limited & Others, relating to application under Section 156(3) Cr. PC *vide* Mark 'A' and copy of resignation dated 24.07.2017 of Vikram Singh - Deputy General Manager HR accepted by the Managing Director on 24.07.2017 itself *vide* Exhibit 'M2'. The original of Exhibit 'M2' was seen and returned at the time of recording evidence. On 26.08.2022 the learned representative for the management closed the evidence on behalf of the management.

8. I have heard the arguments of learned representative for the parties and perused the judicial file. My issue-wise finding are as below:-

Issue No. 1 :—

9. Onus to prove this issue is on the workman.

10. Under this issue learned representative for the workman argued that from the production record it is very clear that the workman practically working as Hand Profiling Machine Operator w.e.f. 03.04.2013 to January 2017, therefore, the claimant Jyoti Parkash falls within the definition of 'workman' as defined in Section 2(s) of the ID Act.

11. On the other hand, learned representative for the management argued that the claimant Jyoti Parkash was drawing salary ₹47,382/- per month. The said Jyoti Parkash had been employed in a supervisory capacity thus he cannot be termed to be a 'workman' as defined in Section 2(s) of the ID Act.

12. From the documentary as well oral evidence led by the parties, it comes out that undisputedly the claimant Jyoti Parkash joined the services of the management on 01.04.2002 as a trainee. The claimant completed two years training period. The management issued appointment letter on 07.04.2004 / Exhibit 'W3' as the worker-cum-Helper category - II on permanent / regular base and fixed wages ₹1,580/- per month plus allowances as applicable to the category of workman. *Vide* letter dated 07.04.2005 / Exhibit 'W4', on completion of probation period, the management confirmed the services of the complaint as worker-cum-helper in Category - II w.e.f. 07.04.2005 *vide* office order dated 30.04.2013 / Exhibit 'W5'. The management promoted the claimant Jyoti Parkash, E-code 730704 as Chargeman in Profiling Department w.e.f. 01.04.2013. In the promotion letter dated 30.04.2013 / Exhibit 'W5' it is specifically mentioned that by virtue of his promotion as Chargeman, which is a supervisory post he shall be mainly responsible for supervision, control and imparting training to the personnel in the Profiling Department. He will also be responsible for the maintenance of proper attendance, discipline / decorum in the department. As per Exhibit 'W5', on account of promotion and new responsibilities, total emoluments and fringe benefits were revised and re-fixed as under w.e.f. the date of promotion :—

Basic as on 01.04.2013	-	₹13,720/-
Home Rent allowance (60% of basic)	-	₹ 8,232/-
Conveyance Allowance	-	₹ 1,000/-
Education Allowance	-	₹ 240/-
Total	-	₹ 23,192.00
Yearly		
LTA (1 month basic)	-	₹ 13,720/-
Medical allowance	-	₹ 10,000/-

13. When put to cross-examination AW1 Jyoti Parkash admitted as correct that he used to receive all the benefits of his promotion as Chargeman which was made *vide* Exhibit 'W5'. AW1 in his cross-examination stated that his working conditions remained the same as a workman. The aforesaid plea taken by the claimant

that even after the promotion to the post of Chargeman his services conditions remained same as that of workman stands falsify from his cross-examination wherein he has stated that when he was working as a workman, he used to wear uniform of workers but after his promotion as a Chargeman (after three months of his promotion), he used to perform his duties wearing Green Coat which is meant for a Chargeman. AW1 admitted as correct that his last drawn salary was ₹47,382/- per month. This fact stands further corroborated from the details of revised compensation w.e.f. 01.07.2016 / Exhibit 'W1', wherein amount of claimant's gross salary is written as ₹ 47,382/-. From the aforesaid version of AW1 coupled with office order / Exhibit 'W5' it is duly proved on record that the claimant Jyoti Parkash was working as a 'workman' from the date of his appointment till 30.03.2014. From 01.04.2013 the claimant was working on the post of Chargeman in Profiling Department and the post of Chargeman is supervisory in nature as clearly mentioned in the promotion letter / office order Exhibit 'W5'. As per the judgment of Hon'ble Supreme Court tilted as Birla Corporation Limited Versus Rajeshwar Mahato reported in 2002(1) SCT 958, while interpreting Section 2(s) of the ID Act, it has been held that if an employee is working in a supervisory capacity then under sub-clause (iv) of Section 2(s) of the ID Act, he would not be a 'workman' if his wages exceeds ₹1,600/- per mensem. The aforesaid judgment is applicable to the facts of the present case to an extent. Accordingly, the claimant cannot be termed as 'workman' and has no right to seek remedy under the provisions of ID Act.

14. Accordingly, this issue is proved against the workman and in favour of the management.

Issue No. 2 :

15. Onus to prove this issue is on the workman.

16. Under this issue the claimant, Jyoti Parkash examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of statement of claim in toto and supported his oral version with documents Exhibit 'W1' to 'W7'. On the other hand, the management examined MW1 Mohinder Singh S/o Tulsi Ram, deployed to work as a Security Supervisor by M/s Hawks Eye Security Service Pvt. Ltd. (contractor) in the establishment of M/s Groz Beckert Asia Private Limited. MW1 *vide* his affidavit Exhibit 'MW1/A' deposed that he was deployed by his employer in the establishment of the management since 12.05.2014. On 17.03.2017, his duty hours were from 2:00 P.M. to 10:00 P.M. On 17.03.2017, Jyoti Parkash reported for duty at 2:00 P.M. in his schedule shift in Auto Profiling Department. At around 2:55 P.M., Jyoti Parkash rushed towards the main gate of factory and told him that he is in 'B' Shift and was going back home. When he asked Jyoti Parkash about his leave card he replied that "main vaise hi ja rahan hoon" and thrown away his Engineering Coat. Thereafter Jyoti Parkash ran towards the exist gate of the factory. He tried to stop Jyoti Parkash but Jyoti Parkash pushed him away and uttered, if he wants to tell somebody, then tell him. He caught hold Jyoti Parkash but Jyoti Parkash threatened him to break his teeth with brick. At about 3:30 P.M. Jyoti Parkash forcibly pushed the picket gate of the factory and entered in the factory premises. Immediately thereafter Jyoti Parkash fell down on the floor of main gate and told him that he had consumed some substance. He brought this incident to the notice of Shri Bhupinder Singh - Shift Incharge, Shri Sukhwinder Singh - AGM Production, Shri Ajay Patial - Executive HR. He also reported the matter to the then DGM - HR immediately. Jyoti Parkash was taken to the EDEN Hospital, Industrial Area, Phase - I, Chandigarh for treatment. The management had requested his (deponent) employer to produce the Security Supervisor, who was on duty on 17.03.2017 between 2:00 P.M. to 10:00 P.M. Since he (deponent) was on duty on 17.03.2017 and had seen the entire incidence pertaining to Jyoti Parkash, thus, he has been directed by his employer to appear in the Court to make true and correct statement.

17. For corroboration the management examined MW2 Sukhwinder Singh - Assistant General Manager of the management company, who *vide* his affidavit Exhibit 'MW2/A' deposed all the material contents of the written statement. To support the oral version of MWs, learned representative for the management referred documents Exhibit 'M1', Exhibit 'M2' and Mark 'A'.

From the oral as well as documentary evidence led by the parties, it comes out that admittedly the claimant Jyoti Parkash joined the services with the management on 06.04.2002 as a trainee. On completion of two years of training period, the claimant was issued appointment letter on 07.04.2004 / Exhibit 'W3' as worker-cum-helper Category - II on permanent / regular basis and fixed wages of ₹ 1,580/- per month plus other allowances as applicable to the category of workman. On completion of probation period, the management

confirmed the services of the claimant as worker-cum-helper in Category - II w.e.f. 07.04.2005 vide letter dated 07.04.2005 / Exhibit 'W4'. The claimant Jyoti Parkash was promoted as Chargeman in Profiling Department w.e.f. 01.04.2013 vide order dated 30.04.2013 / Exhibit 'W5'.

18. The claimant / AW1 hence taken the plea that on 17.12.2016 the Managing Director of the management-company delivered a speech that they have no work for some employees, willing person may submit resignation otherwise the company will take action at own level. The claimant alleged that the management did not get desired number of resignations, then the management started pressurising the claimant to tender resignation. The purpose of the management was to remove the old workers / employees with high salaries and to engage fresh workers / employees with lesser salaries. In furtherance of the aforesaid desire, Shri Sukhwinder Singh - Production Manager and Shri Vikram - HR Manager started torturing the claimant from last 2-3 months. The said two officers, several times called the claimant in their office during duty hours. At one occasion the said two officers made the claimant to stand idle with the wall. At another occasion the said two officers for the last 2-3 months stopped the claimant from going the toilet up to 4-5 hours. The said two officers tortured mentally and physically harassed and used abusive language against the claimant. Due to the bad behaviour of said two officers, the claimant was under depression.

19. On the other hand, the management admitted that on 17.12.2016 the Managing Director of the company delivered a speech but denied the contents of his speech as alleged by the claimant. The management has taken the plea that the Managing Director in his speech dated 17.12.2016 shared the past / present and future business challenges and appreciated the good work done by some of the departments.

20. In the statement of claim and during his testimony vide Exhibit 'AW1/A', AW1 Jyoti Parkash narrated the occurrence dated 17.03.2017 that on 17.03.2017 during the duty hours around 3:00 P.M. Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager called workman in his cabin and started abusing him. Shri Sukhwinder Singh - Production Manager forcibly gave him a paper and pen compelling to tender his resignation. In turn the workman requested them to tell him his fault. Without listening the workman above named Shri Sukhwinder Singh and Shri Vikram Singh caught hold the workman from his collar and slapped on his mouth without any rhyme. During the manhandling Shri Vikram Singh - HR Manager abused *haram ki audald* if you fail to give your resignation today, then we have good understanding with police officers, we will get registered any theft case which is non-bailable offence. In these bad circumstances at 3:00 P.M. the workman was pushed in deep depression. Shri Sukhwinder Singh - Production Manager and Shri Vikram Singh - HR Manager compelled the workman to consume some poisonous substance, due to which the workman became semi-unconscious. In compliance with the orders of above mentioned both the officers, one Security Guard pushed the workman outside to the main gate of the factory instead of help and treatment. The workman re-entered the main gate of the factory and become unconscious. Then some employee carried and admitted the workman in the EDEN Hospital, Phase - I, Chandigarh. The police officers came in the hospital to record statement of the workman. The officers asked the mobile number of the company's officers.

21. On the other, the management in the written reply stated that in fact, on 17.03.2017 Jyoti Parkash reported for duty at 2:00 P.M. in his scheduled shift in Auto Profiling Department. At around 2:55 P.M. Jyoti Parkash rushed towards the main gate of the factory told the Security Supervisor Mohinder Singh on duty, that he is in 'B' Shift and was going back home. When the Jyoti Parkash was asked about his leave card, he replied to the Security Supervisor that "main waise hi ja raha hun" and thrown away his engineering coat and he ran towards the exist gate of the factory. The Security Supervisor tried to stop Jyoti Parkash but Jyoti Parkash pushed him away and uttered that if he wanted to tell somebody then tell him. The Security Supervisor caught hold Jyoti Parkash but Jyoti Parkash threatened him to break his teeth with brick. Thereafter, Jyoti Parkash went out of the main gate of the factory. This incident was brought to the notice of Shri Bhupinder Singh - Shift Incharge, Shri Sukhwinder Singh - AGM Production and Shri Ajay Patial - Executive HR and also to DGM - HR. At about 3:30 P.M. Jyoti Parkash forcibly pushed the picket gate of the factory and entered the factory premises. Immediately thereafter, Jyoti Parkash fell down on the floor of the main gate and told Mohinder Singh - Security Supervisor that he had consumed some substance. The Security Supervisor reported the matter to DGM-HR immediately and Jyoti Parkash was taken to EDEN Hospital, Industrial Area, Phase - I,

Chandigarh. As reported by Jyoti Parkash to the Doctors on duty, Jyoti Parkash had consumed 'All-out' poisonous substance on 17.03.2017 for which he was treated in the hospital from 17.03.2017 to 01.04.2017 and discharged from hospital on 01.04.2017.

22. As far as the truthfulness of version of Jyoti Parkash with regard to the incident dated 17.03.2017 as narrated by him in the statement of claim and in his affidavit Exhibit 'AW1/A' is concerned, the version of Jyoti Parkash is highly doubtful and not worthy of credence for the reasons that there are material discrepancies in the manner of occurrence. In affidavit Exhibit 'AW1/A' Jyoti Parkash stated that Sukhwinder Singh - Production and Vikram Singh - HR Manager compelled him to consume some poisonous substance due to which he fell down in semi-unconscious condition. On the order of said two officers the Security Guard pushed him outside the main gate of the factory. AW1 in cross-examination has admitted as correct that he filed a criminal complaint against Managing Director Sukhwinder Singh and Shri Vikram Singh and the allegation made in the demand notice and the criminal complaint are the same. AW1 admitted as correct that his criminal complaint has been dismissed by JMIC, Chandigarh on 17.05.2019. Copy of testimony of Jyoti Parkash as CW1 and Jasvir Singh CW4 recorded in the above said complaint / application under Section 156 Cr PC tilted as Jyoti Parkash Versus Anton Reinfelder, Managing Director, Groz Beckert Asia Private Limited & Others is Exhibit 'M1'. As per Exhibit 'M1', CW1 Jyoti Parkash stated that on 17.03.2017 the respondents called him in their office and threatened and pressurised him to sign on resignation letter right now. The respondents tortured him and he was forced to take poisonous substance as a result of which he became unconscious and fell down. Jyoti Parkash's own witness CW4 Jasvir Singh (examined as CW4 in the matter of application under Section 156 Cr. PC) in his testimony in a contradictory manner stated that he was working in the said firm for the period w.e.f. 03.08.2010 to 31.05.2017. On 17.03.2017 he was on duty and his shift started at about 2:00 P.M. At about 2:00 P.M. he went to HR Department for his leave card, where he saw Production Manager Sukhwinder Singh along with HR Manager Vikram Singh, beaten and threatened Jyoti Parkash to sign. The said Jyoti Parkash in this entire statement of claim or during his testimony in this case nowhere stated that prior to occurrence dated 17.03.2017 he was given beatings by two officers namely Sukhwinder Singh - Production Manager and Vikram Singh - HR Manager. CW4 Jasvir Singh further stated that in the main file Sukhwinder Singh bring a bottle and forced to drink to Jyoti Parkash. Thereafter, Jyoti Parkash fell down. In the present case, Jyoti Parkash nowhere stated either in the statement of claim or in his affidavit Exhibit 'AW1/A' that in the meanwhile Sukhwinder Singh bring a bottle and forced him to consume the same. CW4 Jasvir Singh stated that on seeing him Sukhwinder Singh told him to go to his department. Again after 1 hour, he again called him not to disclose about the above said incident otherwise disciplinary action should be taken against him. In the present statement of claim and in his affidavit Exhibit 'AW1/A' Jyoti Parkash nowhere stated that the occurrence dated 17.03.2017 took place in the presence of Jasvir Singh S/o Gurdeep Singh, a worker of management-company. As per the police inquiry report dated 23.03.2017 made by SI Mohan Singh, PS Industrial Area, Chandigarh (part of Exhibit 'M1'), on receipt of information from EDEN Hospital regarding poison case, SI Mohan Singh along with other officials reached EDEN Hospital, where Jyoti Parkash refused to get recorded his statement. Then Vikram Singh - DGM HR came present in the police station and moved an application that their staff member Jyoti Parkash S/o Late Harbhajan Singh is working in Profiling Department of their company. On that day about 2:50 P.M. Jyoti Parkash when to the main gate and informed the Security Supervisor Mohinder Singh that he came to attend duty of Shift 'B' and he is going back home. Security Supervisor asked him about his leave card then Jyoti Parkash replied that he is going otherwise (vaise he). In the mean time Jyoti Parkash removed and thrown his uniform coat and rushed towards main gate of the company. Security Supervisor tried to stop him but Jyoti Parkash pushed him and told to inform whosoever he wants to. Thereafter, Security Supervisor caught holds Jyoti Parkash. Then Jyoti Parkash said that he will inflict brick blow and will break his teeth. Thereafter Jyoti Parkash went outside the gate. Immediately, Security Supervisor informed the incident to Shri Bhupinder Singh - Shift Incharge, Production, Shri Sukhwinder Singh - AGM Production, Shri Ajay Patial - Executive HR and to him i.e. DGM HR. Thereafter, at 3:30 P.M. Jyoti Parkash came to the main gate and after pushing the gate forcibly entered the company's premises and laid down on the floor of the company. Jyoti Parkash told Security Supervisor that he has consumed some substance due to which saliva is dripping out of his mouth. Security Supervisor informed the whole incident to Shri Vikram Singh - Factory Manager. The Security Supervisor immediately sent Jyoti Parkash to EDEN Hospital for medical treatment. Thereafter SI went to EDEN Hospital to record the statement of Jyoti Parkash,

who in his statement narrated that yesterday 17.03.2017 he came to his duty. He was allowed to perform his duties. He had purchased 'All-out' for his household use which was kept in his car. Yesterday on 17.03.2017 at about 3:30 P.M. he consumed 'All-out' kept in his car on account of harassment caused by Vikram Singh and Sukhwinder Singh. He had no intention to commit suicide and he is willing to work in the factory. From the aforesaid version of Jyoti Parkash got recorded by him to SI Mohan Singh, police Inquiry Officer, it is made out that Jyoti Parkash consumed 'All-out' already lying in his car and there was no occasion with the officers of the management to arrange poisonous substance. As per the statement of Jyoti Parkash recorded by the police Inquiry Officer none of the officers of the management made Jyoti Parkash to consume poisonous substance. SI Mohan Singh in his inquiry report concluded that from the said application and statement of Jyoti Parkash it has come out that Jyoti Parkash has levelled allegations against the company that he has been pressurised to be removed from the job. The company intends to remove him from the job and is pressurising for the same. On being aggrieved from the same, he has consumed 'All-out'. Jyoti Parkash neither produced any written notice relating to his removal from the job nor he has complained to any other authority in this regard. On the other side, Mr. Vikram - DGM on behalf of the management has moved a written application that from last many days Jyoti Parkash is pressing upon Shri Sukhwinder Singh - AGM Production and Shri Vikram Singh to accept his resignation after making payment of compensation whereas the company has no other settler to operate the machine, being operated by Jyoti Parkash, therefore, they cannot accept his resignation. They also informed that they did not cause any harassment to Jyoti Parkash but he himself has done the wrongful act. In this regard MLR is obtained. The Doctor has reported the intake of 'All-out'. SI Mohan Singh concluded his inquiry report with the remarks that legal opinion may be obtained. The report of SI Mohan Singh is further forwarded by Inspector / SHO, PS Industrial Area, Chandigarh with his endorsement dated 23.03.2017. The Deputy DA Legal in its report dated 28.03.2017 (which is part of Exhibit 'M1') mentioned that he has gone through in detail all the documents, complaints, MLR etc. along with statements recorded during inquiry and inquiry report which is self-explanatory and duly forwarded by a detailed noting of SHO. Keeping in view all the above, to his opinion, at this stage no *prime facie* cognizable case is made out against the allegations on the complaint of complainant. Learned JMIC in its order dated 07.05.2019 / Mark 'A' relating to application under Section 156(3) Cr. PC recorded finding in para 11 of its order which is reproduced as below :—

"11. In the present case, the complainant remained failed to prove the facts asserted by him in the complaint to make out a case for summoning any of the accused to face trial. None can be allowed to use the criminal prosecution as an instrument of harassment or for settling private vendetta. The bare glance of complaint and the evidence led by the complainant reveals that the facts are not at all sufficient to summons the accused persons. From the material facts of the complaint, which has been reproduced by the complainant and his witness in the statements, do not make out the case in favour of complainant and against any of the accused person. Without laying proper foundation in the complaint and further without supporting it with the necessary legal evidence, the complaint case cannot proceed further."

Learned JMIC *vide* its order datd 07.05.2019 dismissed the complaint / application under Section 156 Cr. PC.

23. Although the copy of order dated 07.05.2019 / Mark 'A' is not exhibited into evidence but the said order Mark 'A' is admitted document of the claimant. When put to cross-examination, the claimant / Jyoti Parkash admitted as correct that he had filed a criminal complaint against the Managing Director Shri Sukhwinder Singh and Shri Vikram Singh. AW1 admitted as correct that his criminal complaint has been dismissed by the JMIC, Chandigarh on 07.05.2019.

24. The claimant Jyoti Parkash failed to bring on record any document whereby he has challenged the order dated 07.05.2019 / Mark 'A' by filing any appeal or revision before the competent appellate / revisionist court. In view of the material discrepancies discussed above, in the manner of occurrence dated 17.03.2017 narrated by Jyoti Parkash, the same is not trust worthy.

25. There is no denial to the fact that the claimant Jyoti Parkash was terminated from service without issuing any memo, charge sheet, without conducting any inquiry and without making payment of notice pay. The notice was neither offered nor paid. Learned representative for the claimant contended that the termination without following the procedure is illegal and amounts to unfair labour practice. On the other hand, learned

representative for the management has taken the plea that the claimant lost confidence due to magnitude of occurrence dated 17.03.2017. In view of condition No.10 of promotion order / office order Exhibit 'W5' the claimant Jyoti Parkash was removed from service. It would be apposite to reproduce condition No.10 of office order dated 30.04.2013 / Exhibit 'W5' :—

"10. Your employment can be terminated in case at any time your integrity is found doubtful and / or the management, losses confidence in you."

In the present case, in view of the incidence dated 17.03.2017, the claimant Jyoti Parkash has certainly lost the confidence of management, which attracts condition No.10 of Exhibit 'W5', mentioned above. The case law referred by learned representative for management in ***The Workmen of M/s Fire Stone Type and Rubber Co. Versus The Management and Others, reported in 1973 AIR (SC) 1227*** is applicable to the facts of the present case and to an extent. As many as 10 principles were held to be established. It would be pertinent to reproduce only some of them :—

"(4) Even if no enquiry has been held by an employer or if the enquiry held by him in found to be defective, the Tribunal is order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying its action, and it is open to the employee to adduce evidence contra."

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective."

26. In view of the aforesaid proposition of law, even if no inquiry has been held by an employer, the Tribunal in order to satisfy itself about the legality and validity of order, had to give an opportunity to the employer and the employee to adduce evidence before it. Therefore, it is clear that the employee dismissed after holding domestic inquiry even without inquiry but in later case the employer has to lead evidence first time before the Court to prove the charges against the employee. In the present case, both the parties led their evidence by availing full opportunity. So, there has been no illegality in dismissing the claimant Jyoti Parkash without holding inquiry on the ground of loss of confidence as per condition No.10 of Exhibit 'W5'.

27. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

Dated 29.08.2022

(Sd.) . . . ,
(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
OFFICE OF THE COMMISSIONER OF FOOD SAFETY

Order

The 19th October, 2022

No. DO-2022/3174.—WHEREAS, Regulation 2.3.4 of the Food Safety & Standards Prohibition and Restriction on Sales) Regulations, 2011 made by the Food Safety & Standards Authority of India in exercise of the powers conferred by Section 92 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006) read with section 26 thereof, prohibits articles of food in which tobacco and nicotine are used as ingredients, as they are injurious to health.

AND WHEREAS, Gutkha and Panmasala are the articles of food in which tobacco and nicotine are widely used as ingredients now-a-days.

AND WHEREAS, it is expedient to prohibit Gutkha and pan masala in the Union Territory of Chandigarh being food products in which tobacco and nicotine are widely used as ingredients.

AND WHEREAS, the Commissioner of Food Safety, Chandigarh Administration, is empowered under Section 30 of the Food Safety & Standards Act, 2006 to prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food in the whole of the Union Territory of Chandigarh for a period not exceeding one year.

NOW, THEREFORE, the undersigned in exercise of the powers conferred under Section 30 of the Food Safety & Standards Act, 2006, hereby, prohibit in the interest of public health, the manufacture, storage, sale or distribution of Gutkha and Panmasala containing tobacco or nicotine as ingredients by whatsoever name it is available in the market, in the whole of Union Territory of Chandigarh for one year from the date of issue of this Order.

Dated : 06-10-2022

YASHPAL GARG, IAS,
Commissioner of Food Safety,
Chandigarh Administration.

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."